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MARINE TERMINAL AGREEMENT

between

CANAVERAL PORT AUTHORITY

and

DCL PORT FACILITIES CORPORATION



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MARINE TERMINAL AGREEMENT

THIS MARINE TERMINAL AGREEMENT (hereinafter "Agreement"), made effective this 17th day of May, 1995, by and between the CANAVERAL PORT AUTHORITY (hereinafter the "Port Authority"), a political subdivision of the State of Florida, whose mailing address is P.O. Box 267, Cape Canaveral, Florida, 32920, and DCL PORT FACILITIES CORPORATION (hereinafter "DCL"), a corporation organized and existing under the laws of the State of Delaware, whose mailing address is 210 Celebration Place, Celebration, Florida 34747.

W I T N E S S E T H :

WHEREAS, there are currently being constructed two passenger vessels of approximately 85,000 gross registered tons each, the first of which is expected to be delivered to its owner, DCL Management, Ltd., in January 1998, and the second of which is expected to be delivered to its owner, DCL Services, Ltd., in November 1998;

WHEREAS, DCL Management, Ltd. and DCL Services, Ltd. intend to operate such vessels in passenger cruise service in various parts of the world;

WHEREAS, the Port Authority desires for DCL Management, Ltd. and DCL Services, Ltd. to conduct passenger cruise service from Port Canaveral;

WHEREAS, DCL Management, Ltd. and DCL Services, Ltd. desire to obtain cruise terminal facilities at Port Canaveral by contracting with DCL for such cruise terminal facilities;

WHEREAS, DCL will hereby contract with the Port Authority for cruise terminal facilities at Port Canaveral and DCL will then provide such cruise terminal facilities to DCL Management, Ltd. and DCL Services, Ltd.; and

WHEREAS, the Board of Commissioners of the Port Authority at an official meeting duly held on May 17, 1995 approved the contents and execution of this Agreement.

NOW, THEREFORE, the Port Authority and DCL, in consideration of the mutual representations, promises, covenants, agreements, terms, conditions, provisions and other consideration herein contained, do hereby covenant and agree as follows:

ARTICLE 1 THE CRUISE TERMINAL

1.1. OBLIGATION TO CONSTRUCT CRUISE TERMINAL. The Port Authority shall construct a cruise ship terminal facility (hereinafter the "Cruise Terminal"), for an amount not to exceed

Twenty-Four Million Dollars (\$24,000,000) (not including any amount for interest on debt of the Port Authority incurred for construction of the Cruise Terminal), subject to the exceptions set forth in Paragraph 1.4 hereof, at the location shown on the map attached hereto as Exhibit A, which location is designated by the Port Authority as Cruise Terminal 8 or CT 8.

1.2. DESIGN AND CONSTRUCTION OF CRUISE TERMINAL. The Port Authority shall complete the design and shall construct the Cruise Terminal in accordance with the conceptual plans provided herewith by DCL to the Port Authority, and copies of which are attached hereto as Exhibit B and incorporated herein by reference (hereinafter the "Conceptual Plans"). The Cruise Terminal shall also comprise, include the elements described in, and be designed and constructed in accordance with, the requirements set forth in Exhibit C, which is attached hereto and incorporated herein by reference. The Port Authority's obligations under this Paragraph 1.2. are material terms of this Agreement.

1.3. LICENSE FOR CONCEPTUAL PLANS. DCL, as owner or licensee of the Conceptual Plans, hereby grants to the Port Authority a fully paid up non-exclusive license to use and reproduce the Conceptual Plans solely for the design and construction of the Cruise Terminal.

1.4. DESIGN AND CONSTRUCTION BUDGET; OPTION TO TERMINATE. The Port Authority and DCL agree that the budget for completion of the design and construction of the Cruise Terminal is Twenty-Four Million Dollars (\$24,000,000) (not including any amount for interest on debt of the Port Authority incurred for construction of the Cruise Terminal) (hereinafter the "Budget"). Nine Million Dollars (\$9,000,000) of the Budget is allocated to "Waterside Improvements," as such term is defined in Exhibit C hereto, and the remaining Fifteen Million Dollars (\$15,000,000) is allocated to "Landside Improvements," as such term is defined in Exhibit C hereto. Furthermore,

- (i) In the event that the cost to design and construct the Waterside Improvements exceeds Nine Million Dollars (\$9,000,000), the Port Authority agrees to increase the Budget and to fund such additional cost without any effect on this Agreement; or
- (ii) In the event that the cost to design and construct the Waterside Improvements is less than Nine Million Dollars (\$9,000,000), then the Port Authority agrees that such difference shall be applied to increase the allocation of the Budget to the Landside Improvements; or
- (iii) In the event that prior to the date on which the Port Authority awards a contract for the construction of the

Waterside Improvements, the estimated cost, as prepared by an estimator mutually acceptable to the parties, to complete the design and to construct the Landside Improvements exceeds the amount of Fifteen Million Dollars (\$15,000,000), then (a) the parties shall attempt to agree to a redesign of the Landside Improvements such that the estimated cost is brought below Fifteen Million Dollars (\$15,000,000); or failing that, (b) either the Port Authority or DCL may agree (within thirty (30) days after the date of the estimator's report) to be responsible for and to fund such additional cost; or failing that, (c) either party may provide the other party with a notice of cancellation and termination of this Agreement, in which event this Agreement shall terminate effective as of the date of such notice and DCL agrees to pay to the Port Authority fifty percent (50%) of all design costs incurred by the Port Authority for design of the Cruise Terminal, less fifty percent (50%) of all costs incurred by DCL or its licensor for the Conceptual Plans (which payment shall in no event exceed Three Hundred Seventy Thousand Dollars (\$370,000)), and the parties shall have no other liability to each other.

ARTICLE 2
DESIGN OF CRUISE TERMINAL

2.1. REVIEW AND APPROVAL OF DESIGNS. At each stage of proposed completion of the design for the Cruise Terminal (at completion of conceptual design, and at thirty percent (30%), sixty percent (60%), ninety percent (90%) and one hundred percent (100%) completion of construction documents), the Port Authority shall send to DCL for DCL's review and approval copies of the drawings and specifications prepared by or on behalf of the Port Authority to complete the design in accordance with the Conceptual Plans. DCL shall return one copy of such drawings and specifications either approved, rejected or supplemented with remarks within fourteen (14) days from the date of receipt by DCL for conceptual plans and thirty percent (30%) construction documents, and within ten (10) days from the date of receipt by DCL for all other drawings and specifications, or within such longer period as the Port Authority and DCL agree if DCL requests an extension of the fourteen (14) or ten (10) day period, whichever is applicable. The Port Authority shall notify DCL at least seven (7) days prior to the date of any design review meetings between the Port Authority and its architects, engineers or designers, and DCL shall be permitted to attend any such meetings and to make remarks and suggestions at such meetings.

2.2. REMARKS ON DESIGNS. The Port Authority shall promptly take into account DCL's remarks and suggestions which are in accordance with the Conceptual Plans and the requirements set forth

in Exhibit C hereto, and shall incorporate them into the design and shall thereafter provide DCL with the relevant amended drawings and/or specifications to describe and confirm the applicable modifications.

2.3. REJECTION OF DESIGNS. In the event DCL rejects any drawings or specifications as not in accordance with the Conceptual Plans or the requirements set forth in Exhibit C, then the Port Authority shall modify the design and amend or have amended the drawings and specifications and shall provide DCL with the relevant amended drawings or specifications to describe and confirm the applicable modifications.

2.4. REVIEW AND APPROVAL OF AMENDMENTS. Any amendments of drawings or specifications provided to DCL pursuant to Paragraphs 2.2. or 2.3. shall also be subject to review and approval by DCL in accordance with the provisions of Paragraph 2.1.

2.5. RESPONSIBILITY FOR DESIGNS. The Port Authority shall be solely responsible for the design of the Cruise Terminal, notwithstanding that DCL shall have provided to the Port Authority the Conceptual Plans, and that the Port Authority shall have provided drawings and specifications to DCL for DCL's review and approval and DCL's approval or rejection of, or remarks or suggestions concerning drawings or specifications submitted to DCL shall in no way affect the Port Authority's responsibility to complete the Cruise Terminal and to fulfill the Port Authority's obligations under this Agreement.

2.6. MATERIALITY OF DESIGN APPROVAL. DCL's rights to approve all drawings and specifications as set forth in this Article 2 are material terms of this Agreement.

ARTICLE 3 USE OF CRUISE TERMINAL

3.1. RIGHT TO USE CRUISE TERMINAL. Subject to the provisions of Paragraph 3.2. below, the Port Authority hereby grants to DCL the exclusive use of the Cruise Terminal during the Term (as hereinafter defined) of this Agreement, and any extensions of the Term as herein permitted. Without limitation of the foregoing, DCL shall have the exclusive use and rights to the Cruise Terminal for (i) berthing of the vessels owned and/or operated by DCL Management, Ltd. and DCL Services, Ltd., and such other passenger vessels (which are owned or operated by DCL or a parent, subsidiary or related entity of DCL or by an entity in which DCL or its parent, subsidiary or related entity has a substantial ownership interest) as DCL may bring to Port Canaveral (hereinafter collectively the "Vessels"), (ii) ingress and egress for the Vessels' officers, cruise agents, employees, and passengers, (iii) loading and discharging of passengers and luggage, (iv) bunkering, loading, storing and mooring of the

Vessels, and (v) any other purpose necessary or appropriate for a cruise terminal facility.

3.2. EXCLUSIVE USE OF CRUISE TERMINAL. In order for DCL to maintain the exclusive use of the Cruise Terminal, either of the following must occur:

- (i) the Vessels, or any of them, must cumulatively make a minimum number of calls at Port Canaveral, as set forth in the schedule attached hereto as Exhibit D and incorporated herein by reference, during each one (1) year period, the first of such periods commencing upon the first sailing of the first of the Vessels from the Cruise Terminal (each such successive one (1) year period being hereinafter called a "Use Year"); or
- (ii) in the event that the minimum number of calls during any Use Year, as set forth in the schedule attached hereto as Exhibit D, has not been satisfied, then DCL, if it wishes to retain exclusivity of use, must pay to the Port Authority within thirty (30) days after the end of such Use Year (except as otherwise set forth in Paragraph 3.4.) an amount which is equal to the product of (x) the number of calls below the minimum number of calls for such Use Year, multiplied by (y) the average revenue per call received by the Port Authority from DCL pursuant to this Agreement for dockage fees and wharfage fees during such Use Year (hereinafter the "Shortage Payment").

3.3. SCHEDULE OPTIONS. With respect to Paragraph 3.2.(i), DCL may elect to be governed by the schedule set forth in either Option A or Option B of Exhibit D (hereinafter "Option A" and "Option B") at any time on or before the end of the first Use Year by delivering written notice to the Port Authority of its election. If DCL fails to make its election as aforesaid, then, in such event, DCL shall be deemed to have elected Option A.

3.4. OBLIGATIONS TO MAKE SHORTAGE PAYMENT.

- (i) If DCL elects Option A, then DCL may satisfy the minimum number of calls for Use Years 1 and 2 as set forth in Paragraph 3.2.(i) at any time on or before the end of Use Year 2, or failing that, DCL shall pay to the Port Authority the Shortage Payment within thirty (30) days after the end of such second (2nd) Use Year.
- (ii) If DCL elects Option B, then DCL may satisfy the minimum number of calls for Use Years 1, 2, 3 and 4 as set forth in Paragraph 3.2.(i) at any time on or before the end of Use Year 4, or failing that, DCL shall pay to the Port Authority the Shortage Payment within

thirty (30) days after the end of such fourth (4th) Use Year.

3.5. SATISFACTION OF MINIMUM NUMBER OF CALLS.

- (i) In order to satisfy the minimum number of calls as set forth in Paragraph 3.2.(i) during any Use Year after the expiration of year 2 under Option A, or after year 4 under Option B, whichever is applicable pursuant to Paragraph 3.3, DCL may count and apply any and all calls by the Vessels, or any of them, in excess of one hundred fifty (150) calls which occur with respect to any particular prior Use Year or Years of the Term, as extended, up to a maximum of three (3) prior Use Years immediately preceding the Use Year in which DCL failed to satisfy the minimum number of calls.
- (ii) In addition to and without limitation of DCL's right under subparagraph (i) hereof, in the event DCL makes a Shortage Payment pursuant to Paragraph 3.2.(ii) hereof as a result of failing to satisfy the minimum number of calls for any Use Year after the expiration of year 2 under Option A, or after year 4 under Option B, whichever is applicable pursuant to Paragraph 3.3, and in the next succeeding Use Year after the Use Year in which DCL failed to satisfy the minimum number of calls, the Vessels, or any of them, make a number of calls in excess of One Hundred Fifty (150) calls for such Use Year sufficient to satisfy the shortfall in calls for the prior Use Year or any portion thereof, then DCL shall be entitled to credit the amount of the Shortage Payment or pro rata portion thereof for the prior Use Year against dockage fees and wharfage fees for the current Use Year owed by DCL to the Port Authority pursuant to this Agreement.
- (iii) With respect to subparagraphs (i) and (ii) hereof, DCL shall only be entitled to count and apply any excess calls above the minimum number of calls for any Use Year one time to satisfy a shortfall in another year (it being understood and agreed, however, that DCL may in its discretion count any unused calls (i.e., excess calls that have not been counted towards the minimum number of calls requirement) towards such minimum number, subject only to the prior Use Year and future Use Year time limitations set forth above).

3.6. OPTION TO MAKE SHORTAGE PAYMENT. After Use Year 2 under Option A, or after Use Year 4 under Option B, whichever is applicable pursuant to Paragraph 3.3., DCL shall not be obligated to make any Shortage Payment, but may elect to do so pursuant to Paragraph 3.2.(ii), in its sole discretion, in order to maintain

exclusive use of the Cruise Terminal. In the event DCL elects not to make any such Shortage Payment pursuant to Paragraph 3.2.(ii), then DCL shall no longer be entitled to exclusive use of the Cruise Terminal, and the provisions of Paragraph 3.7. hereof shall apply.

3.7. DISCONTINUATION OF DCL'S EXCLUSIVE USE OF CRUISE TERMINAL. DCL's right to exclusive use of the Cruise Terminal shall be discontinued only in the event that (i) DCL elects not to make a Shortage Payment, as DCL is permitted to elect pursuant to Paragraph 3.6., or (ii) DCL notifies the Port Authority in writing, at any time after the expiration of two (2) Use Years if DCL selects Option A pursuant to Paragraph 3.3., or at any time after the expiration of four (4) Use Years if DCL selects Option B pursuant to Paragraph 3.3., of its election to discontinue its right to exclusive use of the Cruise Terminal. In the event DCL's right to exclusive use of the Cruise Terminal is discontinued pursuant to this Paragraph 3.7. (hereinafter a "Discontinuation"), DCL shall have no responsibility or liability to the Port Authority for any Shortage Payment and the Vessels shall not be required to make any minimum number of calls. However, in the event of such Discontinuation, if DCL elects to continue to use the Cruise Terminal on selected days of the week, then the Port Authority agrees for the remainder of the Term, as extended, to provide preferential berth privileges to the Vessels at the Cruise Terminal and exclusive use of the Cruise Terminal to DCL during twenty-four (24) hour periods commencing at 00:01 hours through 24:00 hours on dates identified by DCL to the Port Authority within fourteen (14) days after the date of such Discontinuation, for the purposes set forth in Paragraph 3.1. hereof. Within fourteen days after the yearly anniversary date of DCL's initial notification to the Port Authority of its schedule for use of the Cruise Terminal, DCL shall notify the Port Authority of its reconfirmation of such schedule for an additional year, in which case DCL's rights to use the Cruise Terminal shall continue as aforesaid, or DCL shall notify the Port Authority of any revisions in its schedule, which the Port Authority will accept (provided it has no prior conflicting commitments for use of the Cruise Terminal) and DCL shall thereafter be entitled to use of the Cruise Terminal as aforesaid. During periods that the Vessels are not scheduled to use the Cruise Terminal, the Port Authority may assign berths at the Cruise Terminal to other passenger vessels, on a first-come-first-serve basis. Following any Discontinuation, in the event of an emergency or condition which will require one of the Vessels to utilize a berth at Port Canaveral at times other than scheduled, the Vessels shall have the right of first call at a suitable, available berth, at the discretion of the Port Authority. In the event of Discontinuation pursuant to this Paragraph 3.7., this Agreement shall continue in full force in effect, except that the remaining provisions of this Article 3 and Paragraphs 6.4. and 6.6. shall not apply to the continuation of this Agreement beyond such Discontinuation, and the parties expressly agree that after such Discontinuation neither DCL nor the Vessels shall have any further

obligation to make any minimum number of calls or to make any Shortage Payment.

3.8. OBLIGATION TO MAKE PAYMENT FOR FAILURE TO COMMENCE FIRST USE YEAR. In the event DCL fails to commence the first Use Year on or before May 15, 1998, for any reason whatsoever, then DCL must thereafter pay monthly to the Port Authority an amount equal to simple interest calculated at the rate of six percent (6%) per annum on the cost to complete the design and construction of the Cruise Terminal, subject to a maximum cost for purposes of this Paragraph 3.8. of Twenty-Four Million Dollars (\$24,000,000), until the commencement of the first Use Year, whereupon the provisions of Paragraph 3.2 hereof shall apply and this Paragraph 3.8 shall be of no further effect.

ARTICLE 4
TERM OF AGREEMENT

4.1. TERM. The term of this Agreement shall commence upon the effective date hereof and shall cease, terminate and expire upon the expiration of ten (10) years from the date of the commencement of the first (1st) Use Year (i.e., the date of the first sailing of the first of the Vessels from the Cruise Terminal) (herein the "Term"), unless sooner terminated as elsewhere provided in this Agreement, or unless extended pursuant to Paragraph 4.2. below.

4.2. OPTIONS TO EXTEND TERM. DCL, in its sole discretion, may extend the Term of this Agreement for all or any of forty (40) one (1) year periods from and after the expiration of the initial Term. DCL shall be deemed to have automatically exercised its option for an additional one (1) year period, unless DCL delivers written notice to the Port Authority of its election not to extend the term of this Agreement (i) for the first option period, not later than one hundred eighty (180) days prior to the date on which the initial Term of this Agreement is scheduled to expire pursuant to Paragraph 4.1. above, and (ii) for each subsequent option period, not later than one hundred eighty (180) days prior to the extended date on which the Agreement is scheduled to expire. If the Term of this Agreement is extended as provided herein, all of the terms and conditions of this Agreement shall remain in full force and effect during the extended Term.

ARTICLE 5
TIME

5.1. TIME FOR COMPLETION OF CRUISE TERMINAL. The Port Authority agrees that the construction of the Cruise Terminal shall be completed and that the Cruise Terminal shall be ready for service by DCL as a fully operational cruise passenger terminal on or before January 1, 1998 (hereinafter the "Completion Date"). The Port Authority's obligation under this Paragraph 5.1. is a material

term of this Agreement and the time for completion of the Cruise Terminal is of the essence of this Agreement. For purposes of this Paragraph 5.1., "ready for service" shall mean that the Cruise Terminal is fit for use for the purpose intended under this Agreement and that the Port Authority has completed the design and construction of all items required to be designed and constructed by the Port Authority pursuant to this Agreement. Furthermore, the parties agree that in order to achieve the Completion Date, the drawings and specifications for construction of the Cruise Terminal should be completed on or before May 1, 1996.

5.2. DELAYS IN COMPLETION OF CRUISE TERMINAL CAUSED BY EVENTS OF FORCE MAJEURE. The time during which the Port Authority is delayed in the completion of the Cruise Terminal by the material acts or omissions of DCL, acts of God, unusually severe and abnormal climatic conditions (e.g., severe hurricane), or other conditions reasonably beyond the Port Authority's control, and which the Port Authority could not reasonably have foreseen and provided against, shall be added to the Completion Date set forth in Paragraph 5.1. hereof; provided, however, that no such time shall be added to the Completion Date unless the Port Authority has notified DCL in writing within fourteen (14) days of the date on which the Port Authority knows of the occurrence of any such event which the Port Authority reasonably expects may delay the completion of the Cruise Terminal.

5.3. OBLIGATION TO PROVIDE ALTERNATIVE BERTHING FACILITIES. Without limitation on any other rights or remedies available to DCL under this Agreement, or at law or in equity, in the event the completion of the Cruise Terminal is delayed beyond January 1, 1998 for any reason or by any cause whatsoever (including events of *force majeure*), the Port Authority agrees to provide preferential berth privileges to the Vessels at Cruise Terminal 10 (or other suitable cruise terminal facility if Cruise Terminal 10 is unavailable because of prior commitments by the Port Authority) and exclusive use to DCL thereof, during twenty-four (24) hour periods commencing at 00.01 hours through 24.00 hours on dates identified by DCL to the Port Authority, for the purposes set forth in Paragraph 3.1. until such time as the Cruise Terminal is completed.

ARTICLE 6 DOCKAGE FEES, WHARFAGE FEES AND OTHER FEES

6.1. DOCKAGE FEES. During the Term, as extended, of this Agreement, DCL shall pay to the Port Authority a dockage fee at the rate published in Tariff No. 10, issued by the Board of Commissioners of Canaveral Port Authority on May 24, 1993 and effective on June 23, 1993, and successive publications thereof (subject to the limitations set forth in Paragraph 6.4. below), based on the length-over-all of the Vessels per each 24 hour period or portion thereof, without proration, during which either of the Vessels is at a Port Authority facility during each berthing.

Notwithstanding the foregoing, however, the Port Authority agrees that the dockage fee charged to DCL during calendar year 1998 shall be no greater than Six and 83/100 Dollars (\$6.83) per twenty-four (24) hour day per foot of ship length overall. For the purposes of calculating the dockage fee on any berthing, dockage charges shall commence when one of the Vessels has been made fast to a wharf or is occupying the berth immediately alongside and shall continue until such Vessel is completely freed from and has vacated the berth. Provided that DCL pays dockage fees to the Port Authority as required hereunder, then such dockage fees paid by DCL shall be in lieu of any dockage fees which may be charged to or payable by the Vessels or the Vessels' owners.

6.2. WHARFAGE FEES. During the Term, as extended, of this Agreement, DCL shall pay to the Port Authority a wharfage fee at the rate published in Tariff No. 10, issued by the Board of Commissioners of Canaveral Port Authority on May 24, 1993 and effective on June 23, 1993, and successive publications thereof (subject to the limitations set forth in Paragraph 6.4. below), for every passenger who (i) embarks on any of the Vessels at the Cruise Terminal, (ii) disembarks from any of the Vessels at the Cruise Terminal, or (iii) arrives and leaves with any of the Vessels from the Cruise Terminal without embarking or disembarking at the Cruise Terminal. Notwithstanding the foregoing, however, the Port Authority agrees that the wharfage fee charged to DCL for each passenger as aforesaid during calendar year 1998 shall be no greater than Five and 05/100 Dollars (\$5.05). Provided that DCL pays wharfage fees to the Port Authority as required hereunder, then such wharfage fees paid by DCL shall be in lieu of any wharfage fees which may be charged to or payable by the Vessels or the Vessels' owners.

6.3. PAYMENT OF DOCKAGE AND WHARFAGE FEES. DCL shall make all payments of dockage and wharfage fees promptly upon being invoiced therefor or otherwise in accordance with applicable law.

6.4. LIMITATION ON INCREASES TO DOCKAGE AND WHARFAGE FEES. Provided that DCL has maintained the exclusive use of the Cruise Terminal by complying with the provisions of Paragraph 3.2. hereof, then the Port Authority covenants and agrees that (i) the charges for dockage fees and wharfage fees to be charged to DCL pursuant to Paragraphs 6.1. and 6.2. hereof shall never be increased by a percentage rate greater than the lesser of (a) the cumulative increase in the Consumer Price Index, as hereinafter defined, commencing as of January 1, 1998, or (b) the actual percentage rate of increase in the Port Authority's standard dockage fees and wharfage fees for all other passenger vessel operating on scheduled cruises of three (3) days or longer and using the Port Authority's other facilities for any such year of the Term, as extended, and (ii) that DCL shall never be obligated to pay dockage fees or wharfage fees greater than the amount to which such fees are limited hereby.

6.5. CONSUMER PRICE INDEX. For purposes of Paragraph 6.4., Consumer Price Index shall mean the Consumer Price Index for all Urban Consumers (CPI-U) - U.S. Average, All Items (1982-1984=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor ("PI"); provided, however, that if the Consumer Price Index described above shall be discontinued, the Consumer Price Index shall be the Index of Consumer Prices in the U.S. most closely comparable to the discontinued Consumer Price Index, after making such adjustments in items included or method of computation as may be prescribed by the agency publishing the same, or as otherwise may be required to compensate for changes subsequent to the effective date hereof. In the event of any dispute between the parties concerning the selection of a substitute Consumer Price Index, the same shall be determined by arbitration in accordance with the then applicable rules of the American Arbitration Association in Florida, the parties hereto agreeing to be bound by the determination of such arbitration and to share the cost of such arbitration. In the event the base reference year used in computing the Consumer Price Index is changed during the Term, as extended, the 1982-84 = 100 index published concurrently by the Bureau of Labor Statistics shall continue to be used hereunder; provided, however, that in the event the Bureau of Labor Statistics ceases to currently publish the 1982-84 index, then the new base year index shall be used and in such event the Port Authority and DCL shall apply a conversion factor to such new index for the purpose of making such new index as comparable as practicable with the prior base year index. Such conversion factor shall be obtained from the Bureau of Labor Statistics if in fact the Bureau publishes such a conversion factor; otherwise a nationally recognized or local firm of certified public accountants mutually selected by the parties shall select a conversion factor.

6.6. GUARANTEE OF MOST FAVORABLE TERMS FOR DOCKAGE FEES AND WHARFAGE FEES. In addition to the limitation set forth in Paragraph 6.4. hereof, provided that DCL has maintained the exclusive use of the Cruise Terminal by complying with the provisions of Paragraph 3.2. hereof, then the Port Authority also covenants and agrees that in no event shall any other passenger vessel operating on scheduled cruises of three (3) days or longer be given rates, discounts, rebates or credits of any kind or nature with respect to its dockage fees and wharfage fees which on a net basis would allow to such other passenger vessel more favorable terms for dockage fees and wharfage fees than those given to DCL hereunder, without having first offered such rates, discounts, rebates or credits to DCL, which DCL may accept or reject in its sole discretion.

6.7. OTHER CHARGES AND FEES. All other charges and fees imposed by the Port Authority on DCL shall be at the standard rates charged by the Port Authority as published in Tariff No. 10, issued by the Board of Commissioners of Canaveral Port Authority on May 24, 1993 and effective on June 23, 1993, and successive

publications thereof. Such charges and fees paid by DCL shall be in lieu of any such charges and fees payable with respect to the Vessels.

6.8. RESOLUTION OF CONFLICTS. In the event of any conflict between the terms of this Agreement and the provisions of any of the Port Authority's standard tariff publications or operations manuals, then the terms of this Agreement shall prevail.

ARTICLE 7 TERMINATION

7.1. TERMINATION BY PORT AUTHORITY. If DCL should, at any time after the commencement of the first Use Year, without notifying the Port Authority of its cause for doing so, fail or refuse to make payments for dockage fees or wharfage fees or make other payments required hereunder for a period of thirty (30) days after the same are required to be paid, then the Port Authority shall have the right, as its sole and exclusive remedy and upon fourteen (14) days prior written notice to DCL, to terminate this Agreement and recover from DCL payment for all unpaid payments (including any Shortage Payment owed pursuant to Paragraph 3.4. hereof) up to the date of termination. If DCL shall cure its said default within such fourteen (14) day period, then the Port Authority's notice of termination shall thereby be rendered ineffective, and this Agreement shall continue in full force and effect. Prior to termination as aforesaid, the Port Authority shall not delay or suspend its performance under this Agreement in whole or in part. The Port Authority may not terminate this Agreement on the grounds that the cause given by DCL for failing or refusing to pay is not in accordance with fact or law, it being understood and agreed that the Port Authority's sole remedy in such event shall be to seek money damages for prior unpaid dockage fees, wharfage fees or other payments required hereunder as aforesaid. The Port Authority acknowledges that it can be adequately compensated by such money damages for any breach of this Agreement which may be committed by DCL. Accordingly, and except as hereinabove provided, the Port Authority expressly agrees that no default, act or omission of DCL, except as provided in Paragraph 7.4. below, shall entitle the Port Authority to cancel or rescind this Agreement or suspend or abandon its performance under this Agreement.

7.2. TERMINATION BY DCL FOR CAUSE. If the Port Authority should be in violation of, or in default under, any provision of this Agreement, (including without limitation those terms or provisions which are designated as being material terms under this Agreement) then DCL may, without prejudice to any other right or remedy available to DCL, and after giving the Port Authority fourteen (14) days written notice and a concurrent fourteen (14) days opportunity to cure such violation or default, terminate this Agreement. If the Port Authority shall cure its said default

within such fourteen (14) day period, then DCL's notice of termination shall thereby be rendered ineffective, and this Agreement shall continue in full force and effect. If this Agreement is terminated pursuant to this Paragraph 7.2., DCL shall have the right to set off against any payments owed to the Port Authority any costs, damages or liabilities incurred by DCL arising from or out of the Port Authority's violation or default, and if such costs, damages or liabilities exceed the amount of any payments owed by DCL to the Port Authority, then the Port Authority shall pay to DCL such additional amount for which it is obligated. The remedies provided to DCL in this Paragraph 7.2. are in addition to, and not in lieu of, any other rights or remedies available to DCL under this Agreement, at law or in equity.

7.3. TERMINATION BY DCL WITHOUT CAUSE. Without limitation of the provisions of Paragraph 7.2., and in addition thereto, DCL shall have the right (in DCL's sole discretion) at any time after the date of this Agreement to cancel and terminate this Agreement by providing notice thereof to the Port Authority, whereupon DCL shall pay to the Port Authority an amount equal to (i) Five Million Nine Hundred Thousand Dollars (\$5,900,000), less the amount of any payments made by DCL to the Port Authority pursuant to Paragraph 3.8. hereof, if such termination occurs prior to the commencement of the first Use Year, or (ii) the Shortage Payment, if any, for (a) Use Years 1 and 2 if DCL selects Option A pursuant to Paragraph 3.3., or (b) Use Years 1, 2, 3 and 4 if DCL selects Option B pursuant to Paragraph 3.3., if such termination occurs after the commencement of the first Use Year, provided that no such Shortage Payment under subparagraph (ii)(a) or (b) above shall be required if DCL has previously made Shortage Payment for such years pursuant to Article 3. Upon such termination, DCL shall have no further liability to the Port Authority other than to pay to the Port Authority the aforesaid amount.

7.4. TERMINATION BY PORT AUTHORITY FOR FAILURE TO COMMENCE FIRST USE YEAR. If DCL fails to commence the first Use Year on or before May 15, 1999 (which date is subject to extension for events of *force majeure* as set forth in Paragraph 8.1), then the Port Authority may cancel and terminate this Agreement by providing thirty (30) days prior written notice to DCL of such cancellation and termination. Upon termination by the Port Authority pursuant to this Paragraph 7.4., DCL shall pay to the Port Authority the amount of Five Million Nine Hundred Thousand Dollars (\$5,900,000), less the amount of any payments made by DCL to the Port Authority pursuant to Paragraph 3.8. hereof, and the parties shall have no further liability to each other.

ARTICLE 8
FORCE MAJEURE

8.1. FORCE MAJEURE. Should DCL be prevented from performing its obligations under this Agreement or from commencing the first

Use Year, or should any or all of the Vessels be delayed in delivery or be unable to make any call at the Cruise Terminal, owing to: Acts of God; engagement in war or other hostilities, civil war, civil commotions, riots or insurrections; requirements of civil or military authorities; blockades; embargoes; vandalism; sabotage; epidemics or sickness; strikes; lockouts; labor shortage; earthquakes; landslides; floods; weather conditions not included in normal planning; failure of electric current, damage by lightning; explosions, collisions, strandings or fire; accidents of any nature resulting in material damage to the Cruise Terminal or any of the Vessels; shortage of materials, fuel or equipment or inability to obtain delivery thereof; actions of a classification society or other regulatory bodies; actions or omissions on the part of the Port Authority and/or third parties (but without prejudice to any other rights of DCL under this Agreement); any cause whatsoever whether or not of a kind previously specified in this Paragraph 8.1 or of a different kind, reasonably to be considered beyond the control of DCL; then and in any such case (i) the date for performance of DCL's obligations hereunder shall be extended by the number of days of delay incurred by DCL in performing such obligations in consequence of the occurrence of any of such circumstances, and (ii) the minimum number of calls, as set forth in Paragraph 3.2.(i) hereof, shall be reduced by the number of calls all or any of the Vessels are unable to make at the Cruise Terminal in consequence of the occurrence of any of such circumstances. DCL shall as soon as reasonably possible notify the Port Authority in writing of the occurrence of any of the foregoing events which it expects may prevent DCL from performing any of its obligations under this Agreement or prevent all or any of the Vessels from making any call at the Cruise Terminal.

ARTICLE 9
CONCESSIONS

9.1. CONCESSIONS. During the Term of this Agreement, as extended, provided that DCL has maintained the exclusive use of the Cruise Terminal by complying with the provisions of Paragraph 3.2 hereof, then all concessions required, necessary or desired by DCL within the Cruise Terminal shall be designed, constructed and operated by DCL, and DCL shall be entitled to the revenue therefrom, and the Port Authority shall not be entitled to design, construct or operate any concessions within the Cruise Terminal, with the sole exception of public telecommunication devices which are solely for use within the Cruise Terminal by passengers and crew of the Vessels and public telecommunication debit cards (i.e., prepaid, declining balance as used, public telecommunication debit cards), which shall be designed, constructed and operated by the Port Authority, and the Port Authority shall be entitled to the revenue therefrom.

ARTICLE 10
MAINTENANCE

10.1. MAINTENANCE OF CRUISE TERMINAL. The Port Authority shall, at its sole cost and expense, maintain and keep in good state of repair the Cruise Terminal, all of the facilities and equipment used in connection therewith, the means of ingress and egress to the Cruise Terminal, and the mooring facilities for the Vessels, to the same level of maintenance and repair as the Port Authority maintains and repairs its newest and best maintained (as determined at any future time) facilities used for the berthing of passenger vessels (and in no event shall such level of maintenance and repairs be less than the standard of maintenance and repairs practiced by the Port Authority as of the date of this Agreement with respect to Cruise Terminal 5). The Port Authority shall also keep the berth and its approaches dredged to a depth to safely accommodate, at all stages of tide, vessels having a maximum draft not in excess of 30 feet.

10.2. FAILURE TO MAINTAIN AND REPAIR. In the event the Port Authority fails to maintain and repair the Cruise Terminal in accordance with Paragraph 10.1. hereof, then DCL may, without prejudice to any other right or remedy available to DCL, and after giving the Port Authority three (3) days written notice and a concurrent three (3) days opportunity to cure such failure, perform such maintenance and repair and credit the cost of such maintenance and repair against any other payments owed by DCL to the Port Authority under this Agreement, including dockage fees and wharfage fees; provided however that if the Port Authority has cured the failure to maintain and repair or is diligently pursuing the cure of such failure within such three (3) day period, then such notice shall be rendered ineffective.

ARTICLE 11
SIGNAGE AND LANDSCAPING

11.1. SIGNAGE AND LANDSCAPING. The Port Authority agrees that DCL shall have the right to review and approve, which approval shall not be unreasonably withheld, all signage and landscaping to be placed on property owned or controlled by the Port Authority (i) at the intersection of SR 401 and the common entry road to the Port Canaveral West Turning Basin cruise terminal facilities (hereinafter the "Common Road"), (ii) along the Common Road, and (iii) at the intersection of the Common Road and the entrance road to the Cruise Terminal. The Port Authority further agrees that DCL may propose to place signage and/or landscaping in accordance with the Port Authority's regulations at any of the locations set forth in the preceding sentence and the Port Authority shall not unreasonably withhold its approval for any such signage or landscaping.

ARTICLE 12
PROTECTION OF PROPERTY, INDEMNIFICATION AND INSURANCE

12.1. PROTECTION OF PROPERTY; RESPONSIBILITY FOR LOSS. The Port Authority shall, throughout the Term of this Agreement, as extended, maintain adequate and continuous protection against loss or damage to the Cruise Terminal, from whatever cause. The Port Authority shall bear all risk of loss of, and injury or damage to, the Cruise Terminal or the aforesaid property from any cause whatsoever. The Port Authority shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Cruise Terminal or the aforesaid property at the Port Authority's sole cost and expense.

12.2. INSURANCE. The Port Authority shall procure, and shall maintain in full force and effect at all times during the Term, as extended, the following insurance:

- (i) property insurance in an amount not less than full replacement cost of the Cruise Terminal (excluding Waterside Improvements and building foundations, for which the Port Authority is self-insured), against direct and indirect loss or damage by fire and all other casualties and risks covered under "all risk" insurance ("Special Extended Coverage Endorsement") (including vandalism, malicious mischief, boiler leakage or explosion and sprinkler leakage);
- (ii) comprehensive general public liability insurance (including blanket contractual, commercial operations, broad form property damage, explosion, collapse and underground hazard), and automobile insurance, insuring against all liability of the Port Authority and its officers, employees, agents, sublessees, assignees, designees, delegees, licensees and invitees arising out of, by reason of or in connection with the condition, use, occupancy or possession of, or any conduct or activity on, in or around the Cruise Terminal, with an initial combined single limit of not less than \$5,000,000 for injuries or damages in any one occurrence, subject to policy aggregate.

12.3. INSURANCE POLICY REQUIREMENTS. The Port Authority shall pay all premiums for the insurance coverage which the Port Authority is required to procure and maintain under Paragraph 12.2. Each insurance policy: (i) shall be issued by an insurer authorized under the applicable laws (and in particular, licensed by the State of Florida) to issue the coverage provided by the policy; (ii) shall be issued by an insurer having an A.M. Best's rating (or its successor) of not less than A minus VIII, or other domestic and/or foreign insurers reasonably satisfactory to DCL in the event the insurance required hereunder is not commercially, reasonably

available; (iii) shall name DCL and the Port Authority as insured parties; and (iv) shall provide that the policy cannot be canceled as to DCL except after the insurer gives DCL thirty (30) days written notice of cancellation.

12.4. MUTUAL WAIVER OF SUBROGATION. The parties hereto hereby waive any and all rights of recovery, claim, action or cause of action against each other, their respective agents, commissioners, officers and employees, for any loss or damage that may occur to the Cruise Terminal, and to all property, whether real, personal or mixed, located in or about the Cruise Terminal, by reason of fire, the elements, or any other cause required to be insured against under the terms of this Agreement regardless of cause or origin, including negligence of the parties hereto, their respective agents and employees.

ARTICLE 13
ACCESS DURING CONSTRUCTION

13.1. ACCESS TO CRUISE TERMINAL DURING CONSTRUCTION. The Port Authority shall afford DCL and any contractors, consultants, inspectors or third parties retained by DCL, access to the Cruise Terminal during its construction (i) for the performance of work on DCL's facilities within the Cruise Terminal which are not part of the Port Authority's obligation to design and construct pursuant to Paragraph 1.2. hereof, (ii) for the purpose of inspecting and monitoring the construction of the Cruise Terminal to verify that the Cruise Terminal is being constructed in accordance with the drawings and specifications approved by DCL, and (iii) for any other proper purpose. The Port Authority shall cooperate and coordinate with DCL any such work, inspections and access.

ARTICLE 14
MISCELLANEOUS

14.1. AMENDMENTS; NO ORAL WAIVER. The provisions of this Agreement cannot be amended, modified, varied or waived in any respect except by an agreement executed by the parties hereto. The Port Authority is hereby given notice that no person has authority to orally waive, or to orally release the Port Authority from, any of the Port Authority's duties or obligations under or arising out of this Agreement. Any waiver, approval or consent granted to the Port Authority or to DCL shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Port Authority or DCL of the obligation to obtain any future waiver, approval or consent. Neither the failure of DCL or the Port Authority to insist upon a strict performance of any of the agreements, terms, covenants and conditions hereof shall be deemed a waiver of any rights or remedies that DCL or the Port Authority may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

14.2. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, to the exclusion of Florida rules of conflicts of laws.

14.3. WAIVER OF JURY TRIAL. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted for trial, without jury, to a court of appropriate jurisdiction, and the parties expressly waive all rights to trial by jury regarding any such matter.

14.4. ASSIGNABILITY; SUCCESSORS AND ASSIGNS.

- (i) This Agreement may be assigned in whole or in part by DCL at any time without the Port Authority's consent to any of DCL's parent, subsidiary or related companies or to an entity in which DCL or any of its parent, subsidiary or related companies has a substantial ownership interest; and otherwise only with the Port Authority's written consent, which consent the Port Authority shall not unreasonably withhold or delay. Upon such assignment by DCL, and provided the assignee shall, in writing, assume DCL's obligations under this Agreement, DCL shall be automatically released and discharged from any and all of its obligations under this Agreement, and the Port Authority shall thenceforth look solely to the assignee for performance of DCL's obligations hereunder. The Port Authority shall not assign this Agreement in whole or in part without the written consent of DCL, which consent DCL shall not unreasonably withhold or delay.
- (ii) DCL and the Port Authority each binds itself and, to the extent permitted herein, its successors and assigns, to the other party and, to the extent permitted herein, the other party's successors and assigns, in respect to all covenants, agreements and obligations contained in this Agreement.

14.5. NOTICE.

- (i) All notices between the parties (whether or not designated as such) which are required or which may be given under this Agreement shall be in writing and shall be deemed given and, unless otherwise provided herein, effective when (i) delivered personally, (ii) when deposited in the United States mail, in a sealed envelope, with postage thereon prepaid, sent by registered or certified mail, return receipt requested, or (iii) when transmitted by wire or facsimile (a confirming letter shall also be mailed to the

appropriate party on the same date). Notices shall be addressed as follows:

If to DCL: DCL Port Facilities Corporation
210 Celebration Place
Celebration, Florida 34747
Attention: Director of Finance

with a copy to: Walt Disney World Co. Legal Department
P. O. Box 10,000
Lake Buena Vista, FL 32830-1000

If to Port Authority: Canaveral Port Authority
200 George King Boulevard
Cape Canaveral, FL 32920
Attention: Executive Director

or to such other address as either party may direct by notice given to the other as hereinabove provided.

- (ii) Notwithstanding the foregoing, any notice sent to the last designated address of the party to whom a notice may be or is required to be delivered hereunder shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the party to whom the notice is directed or the failure or refusal of such party to accept delivery of the notice.

14.6. USE OF DCL'S NAME/CONFIDENTIALITY. The Port Authority, by virtue of this Agreement, shall not acquire any right to use, and it shall not use, the name of DCL, the name of the Vessels or the Vessels' owners, or the name "Disney" (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of The Walt Disney Company or any of its related, affiliated or subsidiary companies: in any of its advertising, publicity or promotion; to express or imply any endorsement of its services; or in any other manner whatsoever (whether or not similar to the foregoing uses hereinabove specifically prohibited). The Port Authority may, during the Term, as extended, of this Agreement have access to, and acquire knowledge of or from, material, data, strategies, systems or other information relating to DCL, the Vessels, the Vessels' owners, or to DCL's parent, affiliated, or related companies, which may not be accessible or known to the general public. Any such knowledge acquired by the Port Authority shall be kept confidential and shall not be used, published or divulged by the Port Authority to any other person, firm or corporation, except as may be required by law, or in any advertising or promotion regarding the Port Authority or its services, or Port Canaveral, or in any other manner or connection whatsoever without first having obtained the written permission of DCL, which permission DCL may withhold in its sole discretion; provided however, that the Port Authority shall

not be required to obtain the prior consent of DCL to take or use aerial photographs of Port Canaveral in which the Cruise Terminal or the Vessels are depicted as background, and not as the primary subject of the photographs. The provisions of this Paragraph 14.6. shall survive the expiration or sooner termination of this Agreement.

14.7. GENERAL.

- (i) The captions of divisions, sections, articles, paragraphs, subparagraphs, clauses and the like in this Agreement are for convenience only and shall in no way define the content or limit the meaning or construction of the wording of the divisions, sections, articles, paragraphs, subparagraphs, clauses and the like. The parties agree that this Agreement shall not be construed more strictly against any party regardless of the identity of the drafter.
- (ii) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (iii) In the event that any provision of any of this Agreement is judicially construed to be invalid by a court of competent jurisdiction, such provision shall then be construed in a manner allowing its validity or, if this leads to an impracticable result, shall be stricken, but, in either event, all other provisions of this Agreement shall remain in full force and effect.
- (iv) The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, fiduciary or employment or agency relationship for the purposes of this Agreement or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein or in any other document, nothing in this Agreement or in any documents executed or delivered or to be executed or delivered shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, fiduciary or employment or agency relationship of any kind or nature whatsoever between the parties hereto.
- (v) All negotiations relative to this Agreement have been conducted by and between the parties without the intervention of any person or other party as agent or broker. DCL and the Port Authority represent and warrant to each other that there are and will be no broker's commissions or fees payable in connection with



this Agreement by reason of their respective dealings, negotiations or communications. DCL and the Port Authority shall, and do each hereby, indemnify, defend and hold harmless the other from and against the claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of their respective dealings, negotiations or communications in connection with this Agreement.

- (vi) Except to the extent otherwise expressly set forth herein, all rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.
- (vii) The designation of certain provisions, terms or obligations of this Agreement as material terms under this Agreement shall in no way be construed to mean that other provisions, terms or obligations hereunder are not also material terms of this Agreement.
- (viii) This Agreement constitutes the entire and sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications.

IN WITNESS WHEREOF, the Port Authority and DCL have executed these presents on the date first above written.

CANAVERAL PORT AUTHORITY

ATTEST:

M.M. Buchanan
M.M. Buchanan, Secretary/
Treasurer

By: [Signature]

Print Name: Malcolm E. McLouth

Title: Chairman

DCL PORT FACILITIES CORPORATION

Witness: [Signature]

By: [Signature]

Print Name: Arthur A. Rodney

Witness: [Signature]

Title: President

[Handwritten initials]